

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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APTIVE ENVIRONMENTAL, LLC,

Plaintiff,

v.

VILLAGE OF FLORAL PARK, NEW YORK,

Defendant.
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ANSWER

CV-18-4690

**BIANCO, J.
TOMLINSON, M.J.**

Defendant THE INCORPORATED VILLAGE OF FLORAL PARK
("VILLAGE") as and for its Answer to the Verified Complaint, states:

ANSWERING "NATURE OF THE CASE"

FIRST: Denies the allegations contained in paragraph "1" of the Complaint.

ANSWERING "JURISDICTION"

SECOND: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraph "2" of the Complaint.

THIRD: As to paragraph "3" of the Complaint, refers the Court to the express
language of 28 U.S.C. §§1331 and 1343, and 42 U.S.C. §1983.

ANSWERING "VENUE"

FOURTH: Admits the allegations contained in paragraph "4" of the Complaint.

ANSWERING "DECLARATORY RELIEF"

FIFTH: As to paragraph "5" of the Complaint, refers the Court to the express
language of 28 U.S.C. §2201 and Fed. R. Civ. P. 57.

SIXTH: Denies the allegations contained in paragraph "6" of the Complaint
and refers the Court to the express language of 42 U.S.C. §1988 and 28 U.S.C. §1920.

ANSWERING "PARTIES"

SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “7” of the Complaint.

EIGHTH: Admits that the VILLAGE is a village duly incorporated under the laws of the State of New York and geographically located in the County of Nassau, but denies that a copy of the summons and complaint was delivered to the VILLAGE’s mayor.

ANSWERING THE “FACTUAL ALLEGATIONS”

NINTH: Denies knowledge or information sufficient to form a belief, as to the allegations contained in paragraphs “9,” “10,” “11,” “12” and “27” of the Complaint.

TENTH: Denies the allegations contained in paragraphs “14,” “26,” “32,” “33,” “39,” “40,” “41,” “42,” “43” and “44” of the Complaint and further states that Plaintiff never filed nor made any written request to solicit customers within the VILLAGE, instead, through counsel, simply threatened the VILLAGE with litigation.

ELEVENTH: Admits the allegations contained in paragraphs “13,” “15,” “16,” “17,” “18,” “19,” “20,” “21,” “22,” “23,” “24,” “25,” “28,” “29,” “30,” “31,” “34,” “35,” “36,” “37” and “38” of the Complaint, except denies that the VILLAGE acted “ultra vires,” refers the Court to the express language of the Village Code and to the various e-mails exchanged with Plaintiff’s counsel, and further asserts that Plaintiff never filed nor made any written request to solicit customers within the VILLAGE, instead, through counsel, simply threatened the VILLAGE with litigation.

**ANSWERING “COUNT ONE:
UNCONSTITUTIONAL COMMERCIAL SOLICITATION BAN”**

TWELFTH: Repeats and reiterates each and every statement made in paragraphs “FIRST” through “ELEVENTH” as if set forth fully herein.

THIRTEENTH: Denies the allegations contained in paragraphs “46” and “47” of the Complaint and refers all questions of law and fact to the time of the trial.

ANSWERING “COUNT TWO: DECLARATORY JUDGMENT”

FOURTEENTH: Repeats and reiterates each and every statement made in paragraphs “FIRST” through “THIRTEENTH” as if set forth fully herein.

FIFTEENTH: Denies the allegations contained in paragraphs “49” and “50” of the Complaint and refers all questions of law and fact to the time of the trial.

ANSWERING “COUNT THREE: PRELIMINARY INJUNCTION”

SIXTEENTH: Repeats and reiterates each and every statement made in paragraphs “FIRST” through “FIFTEENTH” as if set forth fully herein.

SEVENTEENTH: Denies the allegations contained in paragraphs “52,” “53,” “54,” “55,” “56,” “57” and “58” of the Complaint and refers all questions of law and fact to the time of the trial.

ANSWERING “REQUEST FOR PERMANENT INJUNCTION”

EIGHTEENTH: Denies the allegations contained in paragraph “59” of the Complaint.

ANSWERING “DAMAGES”

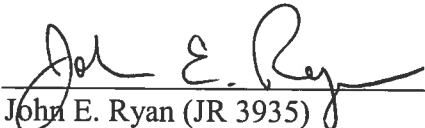
NINETEENTH: Denies the allegations contained in paragraph “60” of the Complaint.

WHEREFORE, the VILLAGE respectfully requests that the Complaint be dismissed, together with such other and further relief as this Court deems proper.

Dated: Floral Park, New York
November 19, 2018

Respectfully submitted,

RYAN, BRENNAN & DONNELLY LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, a true and accurate copy of the above and foregoing **ANSWER** was filed with the Clerk of the Court, and a copy of the Answer was served on Plaintiff by mailing same via United States Postal Service to: McANDREW VUOTTO, LLC, 43 West 43rd Street, Suite 226, New York, New York 10036-7424 and LYNN PINKER COX & HURST, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201, pursuant to Fed. R. Civ. P. 5.